IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2744 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHYAM BANG

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/08/2000

ORAL JUDGEMENT

#. Heard the learned advocate Mr.P.M.Thakkar for the petitioners and learned APP Mr.S.T.Mehta for the

respondent No.1 - State. The respondent No.2 is absent though duly served.

#. The petitioners have challenged the validity of the proceedings initiated by the respondent No.1 and others vide Criminal Complaint No.48/99 in the court of Chief Judicial Magistrate, Vadodara on 13.4.1999 on the ground that, allegations made in the complaint does not disclose any offence made punishable under section 406 of IPC as alleged in the complaint and that complaint disclose the dispute of civil nature for which the present respondent No.1 has already filed Special Civil Suit No.264/99 in the court of Civil Judge (SD), Vadodara.

#. On perusal of the documents annexed to the petition, it appears that the respondent No.2 - Shri Virendra Amrutlal Shah as authorised signatory of Spectoms Engineering Private Limited, (2) Karun Metallex, (3) Spectoms and (4) M/s Shah Engineers has filed Criminal Complaint No.48/99 in the court of Chief Judicial Magistrate, Vadodara. Averments made in the complaint are to the effect that, present petitioners who are named as accused nos. 1, 2 and 3 in the said complaint negotiated to purchase Corm Cob Flour Plant as per specification and other assessories. That such negotiation has taken place in April, 1994 and thereafter by letters of indent dated 6.10.1994, 4.1.1995 and 16.1.1995 the accused placed the order to purchase the Plant Package I to IV. That the complainant supplied the plant at the site and raised invoice for a value of Rs.1,70,65,234/- Out of which the accused have made the payment Rs.1,64,73,563/- and as such Rs.9,11,464/- has remained outstanding due and payable. Similarly, for another plant under the letter of indent dated 4.1.1995 invoice was raised for Rs.25,03,198/-. Out of which the accused have paid the amount of Rs.20,80,644/- and as such Rs.6,50,880/- has remained as outstanding due and payable. That under the third letter of indent dated 6.10.1994, after supply of equipment, invoice was raised for a value of Rs.51,95,431/- against which some payment has been made and the amount of Rs.47,762/- has remained unpaid. That as per the order dated 6.10.1994 after supply of the equipment, invoice was raised for a value of Rs.48,48,902/- against which Rs.38,48,534/- has been paid and Rs.15,41,060/- has remained unpaid.

It is further averred and alleged that the accused having given assurance that on delivery of the plant, the amount shall be paid and on the said assurance the complainant has manufactured and delivered the plant. However, the accused having not made the complete payment

have committed criminal breach of trust and thereby are liable to be prosecuted under section 406 of IPC. It appears that the learned Chief Judicial Magistrate, Vadodara after recording verification referred the complaint to the Incharge of Police Station for investigation under section 156(3) of the Criminal Procedure Code, 1973 (hereinafter referred to as "Code" for short).

#. Learned advocate Mr.P.M.Thakkar has contended that, prior to filing of the impugned complaint, very complainant has lodged Special Summary Suit No.264/99 in the court of Civil Judge (SD), Vadodara as per the copy produced at Annexure-A. That the averments of the plaint disclose the same facts for recovery of outstanding dues as stated in the complaint. It is submitted that the present petitioners have filed written submissions to the above stated suit filed by the respondent No.2 and the complainant and have raised the dispute that as per the terms and conditions of letters of indent, the respondent No.2 alongwith the complainant were to manufacture and supply entire plant. However, on delivery of the equipment when the plant was put to work, it did not work upto the estimated work load and as such present complainants were asked to rectify the same. That on various grounds, the respondent No.1 and other complainant were not entitled to total payment of such equipment on account of breach of contract. Under the circumstances, allegations made in the complaint being in nature of civil dispute, the complaint cannot be permitted to proceed further as it would amount to abuse of process of law by the court.

#. It would be pertinent to note that vide earlier order dated 9.7.1999, rule was issued and duly served. However, the respondent No.2 has failed to appear and filed any written statement. On appreciation of the facts emerging from the copy of the plaint produced on the record and the allegations made in the impugned complaint, there could hardly be doubt that the dispute stated in the criminal complaint is nothing but the dispute in the nature of civil dispute for which the respondent No.2 has already filed the civil suit in the competent court at Vadodara and after filing the said suit, has filed the impugned complaint which is impermissible under the law and deserves to be quashed and set aside.

#. On the basis of the aforesaid discussions, the petition is allowed. The proceedings initiated vide criminal complaint filed by the respondent No.2 and other

complainants bearing No.48/99 in the court of Chief Judicial Magistrate, Vadodara alongwith the proceedings carried out further are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J)
(pathan)